

NPS CONCESSIONS REFORM ACT OF 2006

SEPTEMBER 6, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 5802]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 5802) to amend the National Park Service Concessions Management Improvement Act of 1998, to extend to additional small businesses the preferential right to renew a concessions contract entered into under such Act, to facilitate the renewal of a commercial use authorization granted under such Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “NPS Concessions Reform Act of 2006”.

SEC. 2. ANNUAL GROSS RECEIPTS.

Section 403(8) of the National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. 5952(8)) is amended—

(1) by amending subparagraph (A)(ii) to read as follows:

“(ii) Subject to subparagraph (C), concessions contracts with anticipated annual gross receipts under \$750,000, such amount to be adjusted annually to reflect changes in the Consumer Price Index as of the date of the enactment of this clause. An incumbent concessions contract holder with another concessions contract with annual gross receipts of \$750,000 or more, not including an outfitting and guide concession contract, is not eligible for the right authorized by paragraph (7).”; and

(2) in subparagraph (C), by striking “\$500,000” and inserting “\$750,000, such amount to be adjusted annually to reflect changes in the Consumer Price Index as of the date of the enactment of the NPS Concessions Reform Act of 2006”.

SEC. 3. DEBRIEFING.

Section 403(5) of the National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. 5952(5)) is amended by adding at the end the following:

“(D) DEBRIEFING.—The Secretary shall provide to any person, corporation, and other entity that submitted a proposal and who was not awarded a proposed concessions contract a debriefing as to why they were not selected as submitting the best proposal for that concessions contract. Such debriefing must be requested and must be made within 90 days of the award of the concessions contract. The Secretary shall not be required to disclose any proprietary information of the person, corporation, or other entity that was selected as submitting the best proposal and awarded the concessions contract.”.

SEC. 4. LEASEHOLD SURRENDER INTEREST AND SOURCE OF FUNDS.

Section 405(a)(2)(A) of the National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. 5954(a)(2)(A)) is amended by inserting after “pursuant to this title” the following: “and may be pledged as security for other National Park Service contracts using a combination of leasehold surrender interest if holding one or more contracts with the National Park Service, and the proceeds resulting from such pledged security shall not be restricted for use in the park or parks for which the leasehold surrender interest was pledged”.

SEC. 5. COMMERCIAL USE AUTHORIZATION.

Section 418 of the National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. 5966) is amended—

- (1) in subsection (c), by adding after “authorized use.” the following: “Such uses shall be subject to limitations and fees comparable to those that may be imposed on other authorization holders for the same or similar activities.”;
- (2) by amending subsection (e), to read as follows:

“(e) DURATION.—The term of any authorization, not subject to limited numbers pursuant to (b)(2)(D), shall not exceed 5 years. Where it is determined that only limited numbers of authorizations shall be issued, the term of such authorizations shall not exceed 5 years. Such authorizations may be issued to those applicants that have—

 - “(1) demonstrated the capability to provide quality visitor services; and
 - “(2) experience with the resources and values in the park unit for which the authorization is issued.”; and

(3) by adding at the end the following:

“(g) COST RECOVERY.—The Secretary shall not seek to recover costs from applicants or authorized holders related to capacity studies and recreation activities and monitoring not associated with authorizations.”.

PURPOSE OF THE BILL

The purpose of H.R. 5802 is to amend the National Park Service Concessions Management Improvement Act of 1998, to extend to additional small businesses the preferential right to renew a concessions contract entered into under such Act, to facilitate the renewal of commercial use authorization granted under such Act, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In 1998, Congress approved and the President signed into law the National Park Service Concessions Management Improvement Act (Public Law 105–391). The Concessions Management Improvement Act represented a comprehensive overhaul of the National Park System concessions program. It repealed the 1965 Concessions Act (although many contracts are still operating under the 1965 Act criteria) and affirmed the commitment to conserving national parks and their use and enjoyment by the American people. Among the significant changes made by the 1998 Act was the elimination of the preferential right of renewal for concession contracts valued at more than \$500,000 annual gross receipts. Thus, nearly all concession contracts were to be subject to a competitive bid and solicitation process upon renewal.

While this change has increased competition for concession contracts which in turn will benefit the National Park System and its

visitors, it has also unexpectedly created more of burden for the National Park Service (NPS) to prepare prospectuses under the new law, and has frustrated and concerned many concessioners, especially small single contract holders who fear consolidation of contracts may occur. Meanwhile, many individuals who have not been awarded a contract under the new regime do not know why their bids were not accepted. H.R. 5802 attempts to address this shortcoming by requiring the NPS to explain to a concessioner why its proposal was not selected if requested within 90 days of the awarding of a concessions contract. The Committee believes a debriefing is needed by concessioners who were not awarded contracts to be able to submit a better proposal on future contracts. Current regulations regarding this practice are discretionary and do not establish a serious debriefing method. The result of the debriefing will be better proposals, and ultimately better visitor services.

Under the terms of the 1998 Act, smaller concessioners whose annual gross income from the concession is between \$500,000 and \$3 million have found it difficult to compete with larger, more wealthy companies. At the same time, these smaller concessionaires have found it difficult to obtain necessary capital funds to improve their operations because there is no guarantee that they will have their contracts renewed. These concessionaires have argued that one of the unintended consequences of the new law is that eliminating their preferential right of renewal has disproportionately effected their operations. The right of renewal represented an earned opportunity for an incumbent concessioner to match the terms and conditions of the best competing proposal, but was and is no guarantee that the incumbent will be awarded a contract. Thus, the preference creates a critical incentive for a concessioner to provide quality visitor service, offers a small concessioner stability and continuity, and facilitates long-term planning and investment.

Congress decided in 1998 that public and visitor services would benefit by retaining the earned renewal preference for “small” concessions and guides/outfitters. Congress agreed that continuity, via the renewal preference, helped ensure quality visitor services. “Small” was defined as contracts of \$500,000 or less. H.R. 5802 attempts to address this matter by increasing the threshold from \$500,000 to \$750,000 to be adjusted annually to reflect changes in the Consumer Price Index. The Committee believes there is public value in acting to assure that local small businesses with important ties to NPS units and gateway communities can continue to be part of the concessions community. Enabling these small, local businesses to remain part of the mix helps provide quality visitor services and prevents unhealthy concentration of concessions contracts in the hands of a few very large companies.

Another issue addressed by H.R. 5802 is cross-collateralization (when collateral for one loan is also serves as collateral for another loan). In the current statute, leasehold surrender interest (LSI)—the contractual right of compensation for capital improvements made by concessioners under a concession contract—may only be pledged as security for acquiring a new contract pursuant to the Secretary’s approval. Many believe this stymies competition and hinders a small concessioner when bidding against larger companies who have more assets and therefore find it easier to accumu-

late collateral. LSI, by definition, has no debt, and therefore is an asset that is free and clear.

Finally, in terms of commercial use authorizations (CUA), the Committee believes the 1998 Act as well as H.R. 5802 authorizes the NPS to limit the number of CUAs where appropriate. The Committee expects that such limits, if and when necessary, not be established arbitrarily or as a simple matter of discretion. Rather, limitations should be preceded by studies and other forms of documentation and evidence demonstrating a bona fide need for such limitation. Reasonable notice to impacted parties and interests should also precede establishment of limits. Lastly, the purpose of any such limitations should be clearly demonstrated to ensure conservation of park resources.

COMMITTEE ACTION

H.R. 5802 was introduced on July 13, 2006, by Congressman Stevan Pearce (R-NM). The bill was referred to the Committee on Resources. Prior to the introduction of H.R. 5802, the Subcommittee on National Parks conducted oversight hearings on the issues contained in the bill in April 2005 and in March 2003. On July 19, 2006, the Full Resources Committee met to consider the bill. Congressman Pearce offered an amendment in the nature of a substitute to reduce the threshold for the preferential right of renewal from \$1.5 million to \$750,000; strike language associated with leasehold surrender, except language concerning cross collateralization; and strike the visitor use capacity study for commercial use authorization permits while increasing the term of a commercial use authorization permit to five years. It was adopted by unanimous consent. The bill as amended was then ordered favorably reported to the House of Representatives by unanimous consent by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, clause 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section

308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill could affect offsetting receipts and associated direct spending, but these effects would be less than \$500,000 and would largely offset each other.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 5802—NPS Concessions Reform Act of 2006

H.R. 5802 would amend the National Park Service Concessions Act of 1998. CBO estimates that implementing H.R. 5802 would have no significant impact on the federal budget. Enacting the bill could affect offsetting receipts and associated direct spending, but we expect that these efforts would be less than \$500,000 and would offset each other each year. Enacting H.R. 5802 would not affect revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 5802 would raise the statutory threshold under which companies are granted a preferential right to renew an expiring contract to operate concessions at units of the National Park System (NPS). Under existing law, companies that earn gross annual revenues of less than \$500,000 from concessions operations have this right, which does not guarantee renewal but does allow the existing concessionaire to match the terms of any competing proposal. Under the bill, the preferential right of renewal would apply to all contracts that have revenues of less than \$750,000.

The proposed change could affect future offsetting receipts earned from franchise fees or deposits to concession improvement accounts at national parks by dampening the incentives of competing companies to offer terms that are more advantageous to the NPS. However, CBO estimates that any such effect would be minimal because the total amount of offsetting receipts earned on the concessions that could be affected by the bill is small; the NPS presently earns less than \$500,000 a year (out of total receipts of more than \$45 million) from contracts with a gross value between \$500,000 and \$750,000. Moreover, because franchise fees and deposits to improvement accounts are available for expenditure without appropriation action, any loss of receipts would be offset by a corresponding reduction in direct spending. CBO estimates that other changes that would be made to NPS concessions practices by the legislation would have no budgetary effect.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT
IMPROVEMENT ACT OF 1998**

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**TITLE IV—NATIONAL PARK SERVICE
CONCESSIONS MANAGEMENT**

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SEC. 403. AWARD OF CONCESSIONS CONTRACTS.

In furtherance of the findings and policy stated in section 402, and except as provided by this title or otherwise authorized by law, the Secretary shall utilize concessions contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to units of the National Park System. Such concessions contracts shall be awarded as follows:

(1) * * *

* * * * *

(5) SELECTION OF THE BEST PROPOSAL.—(A) * * *

* * * * *

(D) DEBRIEFING.—The Secretary shall provide to any person, corporation, and other entity that submitted a proposal and who was not awarded a proposed concessions contract a debriefing as to why they were not selected as submitting the best proposal for that concessions contract. Such debriefing must be requested and must be made within 90 days of the award of the concessions contract. The Secretary shall not be required to disclose any proprietary information of the person, corporation, or other entity that was selected as submitting the best proposal and awarded the concessions contract.

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(8) OUTFITTER AND GUIDE SERVICES AND SMALL CONTRACTS.—

(A) The provisions of paragraph (7) shall apply only to the following:

(i) * * *

[(ii) Subject to subparagraph (C), concessions contracts with anticipated annual gross receipts under \$500,000.]

(ii) *Subject to subparagraph (C), concessions contracts with anticipated annual gross receipts under \$750,000, such amount to be adjusted annually to reflect changes in the Consumer Price Index as of the date of the enactment of this clause. An incumbent concessions contract holder with another concessions contract with annual gross receipts of \$750,000 or more, not including an outfitting and guide concession contract, is not eligible for the right authorized by paragraph (7).*

* * * * *

(C) A concessioner that holds a concessions contract that the Secretary estimates will result in gross annual receipts of less than ~~[\$500,000]~~ \$750,000, *such amount to be adjusted annually to reflect changes in the Consumer Price Index as of the date of the enactment of the NPS Concessions Reform Act of 2006* if renewed shall be entitled to a preferential right of renewal under this title if—

(i) * * *

* * * * *

SEC. 405. PROTECTION OF CONCESSIONER INVESTMENT.

(a) **LEASEHOLD SURRENDER INTEREST UNDER NEW CONCESSIONS CONTRACTS.**—On or after the date of the enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concessions contract shall have a leasehold surrender interest in such capital improvement subject to the following terms and conditions:

(1) * * *

* * * * *

(2) A leasehold surrender interest—

(A) may be pledged as security for financing of a capital improvement or the acquisition of a concessions contract when approved by the Secretary pursuant to this title *and may be pledged as security for other National Park Service contracts using a combination of leasehold surrender interest if holding one or more contracts with the National Park Service, and the proceeds resulting from such pledged security shall not be restricted for use in the park or parks for which the leasehold surrender interest was pledged;*

* * * * *

SEC. 418. COMMERCIAL USE AUTHORIZATIONS.

(a) * * *

* * * * *

(c) **LIMITATIONS.**—Any authorization issued under this section shall be limited to—

(1) * * *

* * * * *

(3) such uses by organized children's camps, outdoor clubs and nonprofit institutions (including back country use) and such other uses as the Secretary determines appropriate.

Nonprofit institutions are not required to obtain commercial use authorizations unless taxable income is derived by the institution from the authorized use. *Such uses shall be subject to limitations and fees comparable to those that may be imposed on other authorization holders for the same or similar activities.*

[(e) DURATION.—The term of any authorization issued under this section shall not exceed 2 years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.]

(e) DURATION.—*The term of any authorization, not subject to limited numbers pursuant to (b)(2)(D), shall not exceed 5 years. Where it is determined that only limited numbers of authorizations shall be issued, the term of such authorizations shall not exceed 5 years. Such authorizations may be issued to those applicants that have—*

(1) *demonstrated the capability to provide quality visitor services; and*

(2) *experience with the resources and values in the park unit for which the authorization is issued.*

* * * * *

(g) COST RECOVERY.—*The Secretary shall not seek to recover costs from applicants or authorized holders related to capacity studies and recreation activities and monitoring not associated with authorizations.*

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